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Entergy

Entergy Services, Inc.
639 Loyola Avenue (70113)
P.O. Box 61000
New Orleans, LA 70161-1000
Tel 504 576 3101
Fax 504 576 5579

Edward R. Wicker, Jr.
Senior Counsel
Legal Services - Regulatory

September 16, 2015

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LA PUBLIC SERVICE COMMISSION

*Via Fax (225) 342-0877*
Ms. Terri Lemoine Bordelon
Louisiana Public Service Commission
Records and Recording Division
Galvez Building, 12th Floor
602 North 5th Street
Baton Rouge, LA 70802

**RE: LPSC In Re: The United States Environmental Protection Agency's Proposed Rule on Carbon Dioxide Emissions from Existing Fossil-Fuel Fired Electric Generating Units Under Section 111(d) of the Clean Air Act**
**LPSC Docket No. R-33253**

Dear Ms. Bordelon:

Please see attached Entergy Gulf States Louisiana, L.L.C. and Entergy Louisiana, LLC's Joint Comments in response to the Commission Staff's Notice of Request for Specific Comments on Final Rule.

Please file these comments in the record in accordance with the Commission's fax filing procedures and return a date-stamped copy to me in the enclosed, self-addressed envelope. I have enclosed a check in the amount of $25.00 to cover the fax filing fee.

Thank you for your assistance with this request. If you have any questions, please feel free to call me.

With Best Regards,

Edward R. Wicker, Jr.

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Enclosure

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BEFORE THE

LOUISIANA PUBLIC SERVICE COMMISSION



| | | |
|---|---|---|
| **LOUISIANA PUBLIC SERVICE COMMISSION, EX PARTE. IN RE: THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY'S PROPOSED RULE ON CARBON DIOXIDE EMISSIONS FROM EXISTING FOSSIL-FUEL FIRED ELECTRIC GENERATING UNITS UNDER SECTION 111(D) OF THE CLEAN AIR ACT** | ) ) ) ) ) ) ) | **DOCKET NO. R-33253** |

**JOINT COMMENTS OF ENTERGY GULF STATES LOUISIANA, L.L.C. AND ENTERGY LOUISIANA, LLC IN RESPONSE TO THE COMMISSION STAFF'S NOTICE OF REQUEST FOR SPECIFIC COMMENTS ON FINAL RULE**

Entergy Gulf States Louisiana, L.L.C. and Entergy Louisiana, LLC (collectively, the "Companies") respectfully submit these joint comments in response to the Request for Specific Comments on Final Rule issued by the Staff of the Louisiana Public Service Commission ("LPSC" or "Commission") in the above-referenced docket on August 12, 2015 in regards to the United States Environmental Protection Agency ("EPA") announcement of the final version of its Clean Power Plan ("CPP" or "Final Rule"). The Companies note as a preliminary matter that they are continuing to study the very lengthy and complex Final Rule and proposed federal plan and model rules issued on August 3, 2015, and there are a number of key variables, such as the form and content of the State compliance plan, that would be needed to understand the full effects of the Final Rule. For example, although EPA changed the rule in several ways intended to reduce the likelihood of reliability problems, such problems may still arise if States elect to put certain operating limits on units in order to ensure compliance – such as operating limits that constrain the number of hours per year that a unit could operate – or if allowance/credit markets are highly constrained geographically or do not materialize. The Companies also anticipate that

robust legal challenges will arise from many quarters that may stay or significantly alter the content and application of the Final Rule. The following comments are based on a good faith attempt to understand the Final Rule and proposed federal plan/model rules at this point in time. Changes in the Companies' understanding of the Final Rule and associated rules or their point of view regarding these issues may occur following additional analyses. Accordingly, these responses are preliminary in nature and may be supplemented at any time.

**Joint Comments in Response to Specific Questions**

1. **Are the carbon dioxide emission targets included in the Final Rule more favorable to Louisiana, relative to the originally-proposed CPP, and to what extent are these new emission targets likely to impact Louisiana's compliance costs and electricity rates?**

The carbon dioxide emission targets in the Final Rule are less stringent numerically than those in the proposed rule. The interim goal changed from 948 to 1293, and the final 2030-forward goal changed from 883 to 1121 (all expressed as lbs. CO2/MWh). Also, the Final Rule State emission requirements first apply in 2022 instead of 2020, and States are given some discretion in determining how quickly to reach the interim goal, applicable as an average over the years 2022-2029. Louisiana's compliance costs and the Final Rule's impact on electricity rates depend on a number of currently unknown variables, including the form of a compliance plan adopted by the State (federal implementation plan, emissions rate-based plan, mass-based plan) and the details of that plan, whether and how the State engages in interstate trading of allowances or emission rate credits, and the plans adopted by other States.

**2. Please comment on the extent to which the Final Rule will impact reliability.**

The extent to which the Final Rule will impact the reliability of electric service in Louisiana depends on a number of currently unknown variables, including the form of a compliance plan adopted by the State (federal implementation plan, emissions rate-based plan, mass-based plan) and the details of that plan, whether and how the State engages in interstate trading of allowances or emission rate credits, and the plans adopted by other States. Generally speaking, a State plan that allows trading of allowances or emission rate credits, especially in an interstate market, should have less impact on reliability because generating units would have the option of purchasing allowances or credits, if needed, in order to generate and emit at levels necessary to maintain reliability. To the contrary, a State plan that imposed operational constraints on generating units (which could, for example, allow only a certain number of operating hours per year) could cause reliability impacts. EPA also states that the Final Rule includes the following provisions intended to support reliability: First, a State is required to demonstrate that it took reliability into consideration during the development of its plan, and EPA encourages States to consult with any applicable regional planning authority and its own state energy regulators during plan development. Second, in certain unforeseen emergency situations, a State can obtain authorization for a generating unit to operate at a higher-than-planned emission limit in order to maintain system reliability. Third, the Final Rule allows for State plan modifications in certain situations to remedy reliability concerns.

3. **Please comment on whether or not the Louisiana-specific baseline data revisions included in the Final Rule are appropriate.**

The Companies' review of the Final Rule and its supporting documents to date has not revealed errors in EPA's inclusion of units as affected units in the Final Rule or in the determination of the rated capacity of those units in calculations of the "best system of emission reductions." The Companies continue to review the Final Rule. The Companies have identified potential errors in the State's CO2 emissions and net generation in the 2012 baseline data used by EPA to set BSER and are in the process of determining the impact of the potential errors.

4. **Please comment on the reasonableness of the interim compliance timelines relative to the originally-proposed timelines.**

The Final Rule State emission requirements first apply in 2022 instead of in 2020, and States are given some discretion in determining how quickly to reach the interim goal, applicable as an average over 2022-2029. Although EPA requires the State to develop at least three step goals in reaching the interim average, States are not required to adopt the three step goals provided by EPA. This should help ameliorate the impact of the proposed rule that would have required a large percentage of Louisiana's emission reductions to be attained in 2020 in order for the proposed interim goal to be met. However, the overall reasonableness of the interim compliance timeline for the State is subject to additional review.

5. **Please comment on the reasonableness of the Final Rule's mass-based and rate-based compliance approaches. Is one compliance approach preferable to the other for Louisiana?**

At this point in their review of the Final Rule, the Companies note that there are many sub-options within a State's discretion to use a mass-based or rate-based compliance approach. *See* Attachment A (EPA State decision-tree). The multiple versions of both mass- and rate-based approaches could make either compliance format viable or non-viable for Louisiana. For example, trading-ready options do exist in both mass- and rate-based formats, but only certain types of mass or rate-based programs are deemed "trading ready" by EPA.

There are at least two important preliminary observations about the effect of the CPP on the operations of MISO or other RTOs and ISOs. First, if States within an RTO or ISO adopt different types of plans, the bidding behavior of the generators will vary from state to state, with possible implications for the markets. In trading-ready plans, generators' offers to the RTO market will take into account the opportunity cost of using rate-based credits or mass-based allowances, but those are not interchangeable and will have different market prices. Second, certain types of State plans may lead to operational limits on units. Examples would be non-trading-ready plans (including some "State Measures" plans), or trading ready plans such as a single-state "State CO2 Emission Goal Rate for Existing Units" plan, which would allow intrastate trading of credits only, and could result in the direct or indirect requirement of operational restrictions on individual units (such as a maximum number of operational hours/year). The potential disruption to markets (and reliability) that could arise from widespread use of operational limits to assure CPP compliance was one of the main themes of comments to EPA on the Proposed Rule. While the Final Rule puts an emphasis on trading ready plans that avoid the need for operational limits, the final decisions about this will be highly state specific.

**6. Please comment on how the Final Rule will impact the Commission's least-cost resource planning principles.**

Resource planning post-CPP can still be conducted consistent with the Commission's principles, but the choice of compliance plan by the state will impact the costs and planning parameters of certain units. A State compliance plan could require that operational constraints be placed on generating units (such as a limitation of annual hours of unit operations), or could instead permit trading of allowances or credits as a method for environmental compliance. The first option could create constraints that raise the cost of maintaining reliable service compared to an approach that did not require such limits. The second option, through a mass- or rate-based trading system, likely will create an additional cost for each affected unit's generation through the requirement to use or purchase emission allowances or emission rate credits (offset in the case of mass-based compliance by some allocation of allowances to the state). These costs will need to be included in the determination of a least-cost resource plan.

**7. Please explain the potential rate impacts associated with the Final Rule and please provide any preliminary estimates with as much granularity as possible.**

As stated above, different types of State plans and different implementation options for those plans will result in different sets of costs that will impact rates paid by retail customers. Generally, these include the cost of allowances or credits purchased or used (net of the value of the allowances allocated to the state, in the case of mass-based compliance); the cost of fuel differentials if compliance is met through a shift from coal or steam gas units to natural gas combined-cycle units; the cost of power purchases from other generators if operational constraints are used; and the costs of renewables projects or generation or of energy efficiency

programs, if that is a part of how compliance is met. Until the State works through its planning process or creates a set of scenarios or assumptions for analysis, the Companies cannot estimate these costs or impacts to rates.

**8. What administrative actions should the Commission take in response to the Final Rule?**

The Companies believe the Commission should work with LDEQ and other stakeholders in the development of an initial State 111(d) plan to be filed in September 2016, including a request for a two-year extension for further planning. It is the Companies' understanding that this initial plan would not require the State to indicate what type of compliance plan it will choose in the future but requires instead a description of which types of compliance programs the State is considering (Section 60.5765) and a non-binding statement regarding the State's intention to participate in the Clean Energy Incentive Program (Section 60.5737(d)). During the extension period and as necessary, the Commission and LDEQ should work toward the development of a 111(d) plan that will result in the least possible cost to the Companies and its ratepayers. The LPSC also should continue to engage with MISO and the Organization of MISO States (OMS) to better understand what other states are proposing and the potential effect of such proposed actions on Louisiana's planning and the anticipated cost to customers.

Additionally, the State and its agencies such as the Commission and LDEQ should determine whether the State should file a petition for reconsideration of the Final Rule with EPA or a petition for review with the United States Court of Appeals for the District of Columbia and, if so, take the required administrative steps to support the filing(s).[1]

[1] Louisiana is a party to the extraordinary writ proceedings before that court concerning the rule and requesting a stay of the rule, in which the court recently denied the writ in a per curiam decision.

**9. Should Louisiana develop a State Implementation Plan ("SIP") or defer to the Federal Implementation Plan ("FIP")? If a SIP is preferable, please discuss the types of compliance options Louisiana should explore, particularly any compliance options that are likely to be unique to the State and/or have the potential to reduce compliance costs or increase public benefits. What role should the Commission have in SIP development if this option is in Louisiana's best interest?**

The Companies believe that the Commission should work with LDEQ in developing the State plan, as both rate-regulatory and environmental administrative expertise is needed. Each of these aspects of the Final Rule (and of the proposed federal implementation plan and model rules) bears further study. It is particularly important to note that the proposed federal implementation plan is not a final document but will be submitted for public notice and comment likely through publication in the Federal Register in late October and is unlikely to be finalized prior to the third quarter of 2016. The proposed federal implementation plan document includes several requests by EPA for further comment on foundational issues such as whether the plan should be a rate-based or mass-based plan; whether, in a mass-based program, allowances should be allocated to non-emitting resources such as nuclear and renewables; and whether allowance set-asides should be created for renewables or existing natural gas combined cycle units (and how large those set-asides should be). If a State does not file its own plan, the State eventually will be subject to what is currently an unknown version of the federal implementation plan – a version finalized by EPA after these important decisions are made by the agency. Thus, deciding at this time to accept the federal implementation plan is a high-risk option. On the other hand, EPA repeatedly states in the Final Rule documentation that a State filing its own plan has significant discretion to decide these types of issues, such as how to allocate allowances in a

mass-based program and how to develop unit-specific emission rates, if appropriate, under a rate-based plan. The Companies see significant risk in a State decision to default to a federal implementation plan, the form and substance of which is currently largely unknown.

At this early point, the Companies believe that a mass-based program that allows interstate trading of mass-based allowances is the type of plan most likely to minimize costs and have the least impact on reliability. However, the Final Rule also allows the development of an emission rate plan that includes interstate trading of emission rate credits, and the Companies continue to assess the pros and cons of these options, the impacts on the Companies' ratepayers, and the impacts on MISO operations.

The Companies note that EPA has issued two draft "model rules," one for trading ready rate based state plans and one for trading ready mass-based state plans. These model rules provide certain design elements of a state plan that would be presumptively approvable by EPA, if adopted into a State plan. However, EPA is seeking comment on several aspects of these draft rules, so the final form of the model rules – and the substance of those provisions that would be presumptively approvable – is uncertain at this time.

**10. To what extent should Louisiana consider a regional compliance approach to the Final Rule and what steps should the Commission take to facilitate this process?**

Many studies performed on the proposed rule opined that a multi-state approach to compliance could result in significant cost savings. However, the point was also made that the same results could be achieved through trading ready state plans, without the need for formal multi-state agreements. The Companies note that the Final Rule addressed this point; it does not require the development of an interstate agreement or compact similar to the Regional

Greenhouse Gas Initiative in order to allow trading. Instead, the States interested in trading allowances or ERCs among themselves are required to develop individual plans that are "trading ready" – generally speaking, plans that create a system of allowances or ERCs that are fungible across State lines with other states that have elected the same type of plan. States also have the option of creating multi-state plans; in that case they would need to agree on a blending of their goals, as the RGGI states have done.

The Companies note that MISO is planning to conduct its "Phase IV" study on the Final Rule and is currently gathering stakeholder feedback on the scope and methodology of that study. As part of that study process, it is expected that MISO will analyze options involving multi-state compliance with the Final Rule, although it is not yet clear exactly what scenarios will be included. The Companies believe the Commission should continue to work as a stakeholder in the MISO process while also conducting its own analysis regarding the State as a whole. However, as stated above, Final Rule options that allow State Plans with interstate trading appear at this time to offer the benefits of multi-state compliance -- through flexibility for generators and for RTOs/ISOs, a least-cost option to companies and consumers, and a lower likelihood of impact on reliability -- without the complication of an interstate compact and a blending of goals across states. The Companies continue to analyze the pros and cons of these approaches.

**11. Please provide any additional comments and/or analyses regarding any unique challenges or opportunities created by the Final Rule that are not addressed in any of the preceding inquiries.**

One issue of particular importance for mass-based compliance is what EPA terms "leakage." EPA uses this term to describe a situation where new natural gas combined cycle ("NGCC") generation is constructed and operated instead of increasing the use of existing NGCC to a 75% capacity factor, as modeled in the Final Rule. EPA expresses concern that since a new unit would not be regulated under the Final Rule, this use of new generation, combined with the sale of allowances that were granted to a state in order to use existing NGCC units (but not used by those existing units) to a higher-emitting steam unit, would result in an increase in CO2 emissions contrary to the intent of the Final Rule. EPA requires that States adopting a mass-based plan applicable to existing units only, or a mass-based "state measures" plan, must demonstrate that leakage will be addressed in some way in the State plan. EPA allows three main options for addressing leakage: the State can adopt a "new source complement" plan that brings new units underneath the Final Rule's emission limitations, in return for a (small) increase in the emissions allowed by the State; the State can create a set-aside of allowances available only to existing NGCC units in order to incentivize their use; or a State can make an alternative demonstration that leakage will be controlled or will not occur. The Companies note that this is an important concern, and they are studying the issue carefully.

Respectfully submitted,

By: _____

Kathryn J. Lichtenberg, La. Bar #1836
Lawrence J. Hand, Jr., Bar No. 23770
Edward R. Wicker, Jr., Bar No. 27138
639 Loyola Avenue
Mail Unit L-ENT-26E
New Orleans, Louisiana 70113
Telephone: (504) 576-3101
Facsimile: (504) 576-5579

**ATTORNEYS FOR**
**ENTERGY GULF STATES LOUISIANA, L.L.C.**
**AND ENTERGY LOUISIANA, LLC**

**CERTIFICATE OF SERVICE**

I, the undersigned counsel, hereby certify that a copy of the above and foregoing has been served on the persons listed below by facsimile, by hand delivery, by electronic mail, or by depositing a copy of same with the United States Postal Service, postage prepaid, addressed as follows:

Melanie Verzwyvelt
Rusten May
LPSC Staff Attorney
Louisiana Public Service Commission
P.O. Box 91154
Baton Rouge, LA 70821-9154

Brandon Frey
LPSC Executive Counsel
Louisiana Public Service Commission
P.O. Box 91154
Baton Rouge, LA 70821-9154

Chairman Eric F. Skrmetta
Office of the Commissioner
District 1 – Metairie
433 Metairie Road, Suite 406
Metairie, LA 70005

Commissioner Scott A. Angelle
Office of the Commissioner
District 2 – Baton Rouge
Post Office Box 2681
Baton Rouge, LA 70821

Commissioner Lambert C. Boissiere, III
Office of the Commissioner
District 3 – New Orleans
1450 Poydras Street, Suite 1402
New Orleans, LA 70112

Vice-Chairman Clyde C. Holloway
Office of the Commissioner
District 4 – Forest Hill
11098 Hwy 165 South
Forest Hill, LA 71430

Commissioner Foster L. Campbell
Office of the Commissioner
District 5 – Shreveport
Post Office Drawer E
Shreveport, LA 71161

Lawrence J. Hand, Jr.
Edward R. Wicker, Jr.
639 Loyola Avenue
Mail Unit L-ENT-26E
New Orleans, LA 70113

Kimberly A. Fontan
4809 Jefferson Hwy.
Mail Unit L-JEF-357
Jefferson, LA 70121

Jessica Luparello
Cleco Power LLC
2030 Donahue Ferry Road
Pineville, LA 71360

Gordon D. Polozola
NRG Energy, Inc.
General Counsel—South Central Region
112 Telly Street
New Roads, LA 70760

Kyle C. Marionneaux
Kara B. Kantrow
Marionneaux Kantrow, LLC
10101 Siegen Lane, Building 2, Suite A
Baton Rouge, LA 70810

John O. Shirley
Paul F. Guarisco
Francisca M.M. Comeaux
Phelps Dunbar LLP
II City Plaza
400 Convention Street
Suite 1100
P.O. Box 4412
Baton Rouge, LA 70821

Katherine King
Randy Young
Carrie Tournillon
Maureen Harbourt
Tokesha Collins
Kean Miller LLP
400 Convention Street, Suite 700 (70802)
P. O. BOX 3513
Baton Rouge, LA 70821

Bobby Gilliam
Jonathan McCartney
Counsel for SWEPCO
Wilkinson Carmody & Gilliam
400 Travis St.
Suite 1700
Shreveport, LA 71101

Joshua Smith
Kristin Henry
Sierra Club Environmental Law Program
85 Second St.
Second Floor
San Francisco, CA 94105

Theodore G. Edwards, IV
Southwest Louisiana Electric Membership Corporation
Davidson, Meaux, Sonnier, McElligott, Fontenot, Gideon, & Edwards, LLP
810 South Buchanan St.
Lafayette, LA 70502

Wayne Phillips
Southwest Louisiana Electric Membership Corporation
P.O. Box 90866
Lafayette, LA 70509

Darren Bearson
Senior Vice President
State Affairs and Outreach
American Coalition for Clean Coal Electricity
1152 15th Street, NW
Suite 400
Washington, DC 20005

Raymond L. Gifford, Esq.
Matthew S. Larson, Esq.
Caitlin M. Shields, Esq.
Wilkinson Barker Knauer LLP
1755 Blake Street
Suite 470
Denver, CO 80202

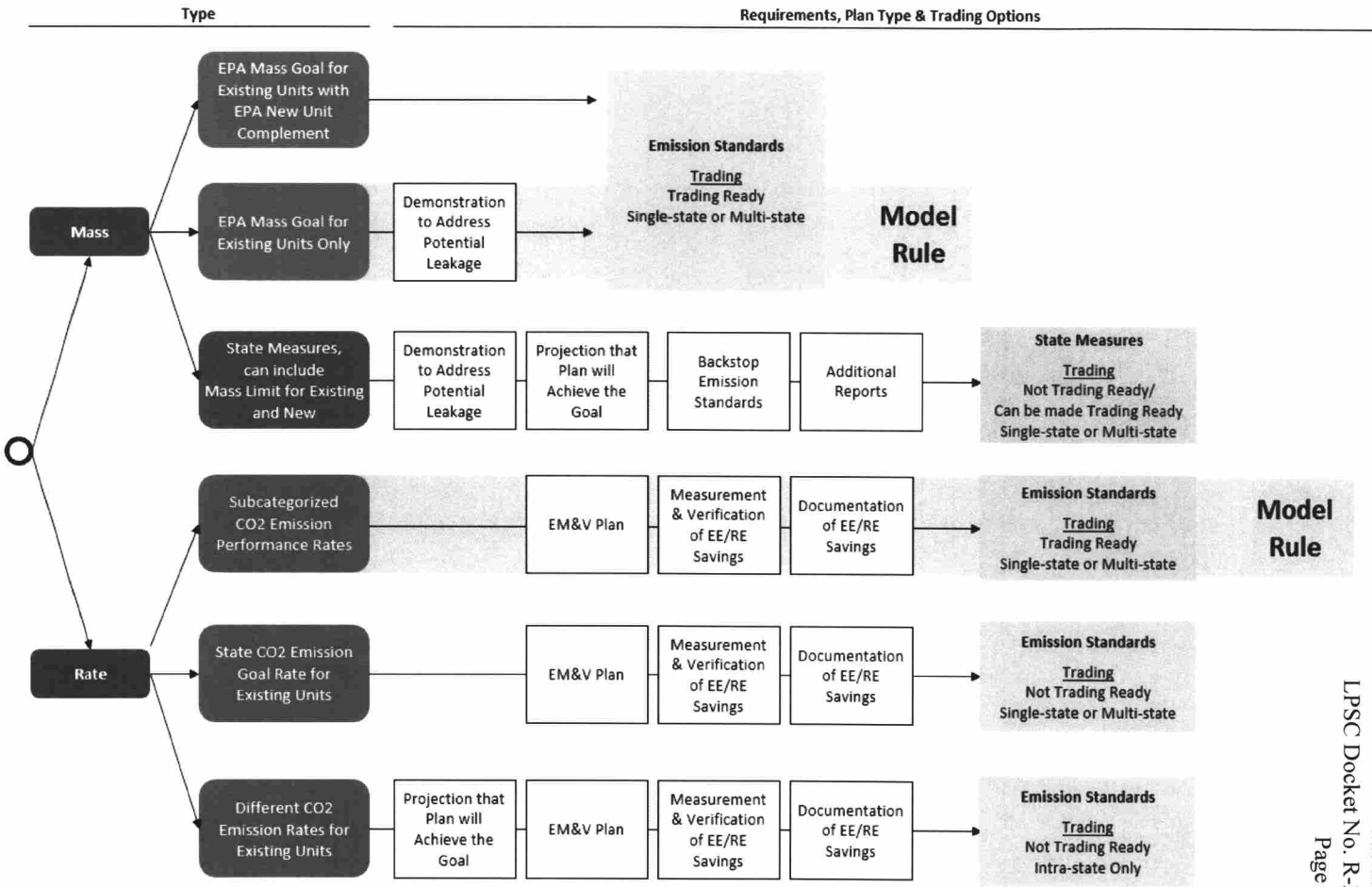
Emory A. Belton, Jr.
Belton Law Firm
301 Main Street
Suite 2100
Baton Rouge, LA 70802

New Orleans, Louisiana, this 16th day of September, 2015.

Edward R. Wicker, Jr.

# **State Plans:** More State Options, Lower Costs

- This chart shows some of the compliance pathways available to states under the final Clean Power Plan. Ultimately, it is up to the states to choose how they will meet the requirements of the rule.
- EPA's illustrative analysis shows that nationwide, in 2030, a **mass-based approach is less-expensive** than a rate-based approach ($5.1 billion versus $8.4 billion).
- Under a mass-based plan, states that anticipate continuing or expanding investments in energy efficiency have unlimited flexibility to leverage those investments to meet their CPP targets. EE programs and projects do not need to be approved as part of a mass-based state plan, and EM&V will not be required.
- For states currently implementing mass-based trading programs, the "state measures" approach offers a ready path forward.
- Demand-side energy efficiency is an important, proven strategy that states are already widely using and that can substantially and cost-effectively lower $CO_2$ emissions from the power sector.



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